

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN ASSEMBLY JUNE 11, 2007

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 425

Introduced by Senator Margett

February 21, 2007

An act to amend Section 29551 of the Government Code, to amend Sections ~~11361.5~~ and *Section* 117560 of the Health and Safety Code, to amend Sections 530.5, 647, 977, ~~1054.5~~, 1170.11, and 1538.5 of the Penal Code, and to amend ~~Sections 827~~ and *Section* 6608.8 of the Welfare and Institutions Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, Margett. Public safety.

~~(1) Existing law prohibits the records of any court, any public or private agency providing certain substance abuse treatment services, or any state agency pertaining to the arrest or conviction of a person for certain drug violations, from being kept beyond 2 years from the date of the conviction or from the date of the arrest if there was no conviction, except as specified.~~

~~This bill would clarify that those provisions apply where the only entries upon the record pertain to the arrest or conviction of one or more of those offenses.~~

~~(2) Existing law requires the destruction of certain drug and alcohol arrest or conviction records.~~

~~This bill would delete those provisions.~~

~~(3) Under~~

Under existing law, a person is guilty of disorderly conduct, a misdemeanor, based on various acts, including if the person loiters or wanders upon the streets or from place to place without apparent reason or business and refuses to identify himself or herself or account for his or her presence to a law enforcement officer in circumstances making that identification reasonable.

This bill would delete the above provision. ~~By revising the definition of a crime, the bill would impose a state-mandated local program.~~

~~(4) Existing law, added by Proposition 115 of the June 5, 1990, statewide general election, requires a party in a criminal case to make an informal request of opposing counsel for desired materials and information before that party may seek court enforcement. Existing law further specifies that if within 15 days the opposing counsel fails to provide the materials and information requested, the party may then seek a court order.~~

~~This bill would revise that latter provision to instead specify that if counsel fails to disclose the materials and information requested, the party may then seek a court order.~~

~~Proposition 115 permits the Legislature, by a vote of $\frac{2}{3}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.~~

~~This bill would therefore require a $\frac{2}{3}$ -vote.~~

~~(5) Under~~

Under existing law, juvenile case files may be inspected only by court personnel, the district attorney, city attorney, or city prosecutor, the minor and his or her parents or guardian, and various others involved in the proceeding.

This bill would add the Attorney General to the list of persons entitled to inspect juvenile case files. The bill would also correct erroneous cross-references and make other clarifying changes to various criminal law provisions.

~~(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~yes~~
no. State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

SECTION 1. Section 29551 of the Government Code is amended to read:

29551. (a) The board of supervisors or city council of any county, city and county, or city that opts to receive funds pursuant to Section 29552 shall establish a local detention facility revenue account, on behalf of the sheriff or the official responsible for local detention facilities in the county, city and county, or city, into which shall be deposited funds paid by the Controller, pursuant to Section 29552. The funds in the local detention facility revenue account shall be used exclusively for the purpose of operation, renovation, remodeling, or constructing local detention facilities and related equipment.

(b) (1) If an appropriation for the purposes specified in Section 29552 is made in any fiscal year, a county, city and county, or city, may charge a jail access fee to a local agency that exceeds the agency's three-year average number of nonfelony bookings for crimes listed in paragraph (2) at a rate not to exceed the actual cost of booking an arrested person into the local detention facility, for each booking in excess of the three-year average. A local agency's three-year average number of nonfelony bookings for crimes listed in paragraph (2) shall be recalculated each year. The jail access fee shall be calculated and paid on a monthly basis, and all revenue derived from the jail access fee shall be deposited into the local detention facility revenue account created pursuant to subdivision (a).

(2) Bookings for violations of each of the following shall be used to determine a local agency's three-year average:

(A) Municipal code violations.

(B) Misdemeanor violations, except driving under the influence offenses and domestic violence misdemeanor offenses, including enforcement of protective orders.

(c) Cities that operate Type One facilities within a county shall be eligible to receive funds from the county's local detention facility revenue account. Cities that operate Type One facilities and charged booking fees pursuant to Section 29550.3 during the 2006–07 fiscal year shall receive funds in an amount proportional to the number of persons booked into the city's Type One facility for which the city charged fees to the arresting agency.

(d) Except as provided in subdivisions (c) to (f), inclusive, of Section 29550 and subdivisions (a) to (c), inclusive, of Section 29550.3, every year in which at least thirty-five million dollars (\$35,000,000) is appropriated for the purposes of Section 29552, counties, cities and counties, and cities are prohibited from collecting fees pursuant to Sections 29550 and 29550.3 from other public entities. In any fiscal year in which the appropriation for the purposes of Section 29552 is less than thirty-five million dollars (\$35,000,000), a county, city and county, or a city may collect fees pursuant to Section 29550 and Section 29550.3 up to a rate, adjusted as provided in subdivision (e), in proportion to the amount that the amount appropriated is less than thirty-five million dollars (\$35,000,000).

(e) The maximum rate of the fee charged by each local agency pursuant to subdivision (d) shall be the rate charged as of June 30, 2006, pursuant to Section 29550 or 29550.3, increased for each subsequent fiscal year by the California Consumer Price Index as reported by the Department of Finance plus 1 percent, compounded annually.

(f) This section shall become operative on July 1, 2007.

~~SEC. 2. Section 11361.5 of the Health and Safety Code is amended to read:~~

~~11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, where the only entries upon the record pertain to the arrest or conviction of one or more of these offenses, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records. The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.~~

1 (b) ~~This subdivision applies only to records of convictions and~~
2 ~~arrests not followed by conviction occurring prior to January 1,~~
3 ~~1976, for any of the following offenses, where the only entries~~
4 ~~upon the record pertain to a violation of one or more of these~~
5 ~~offenses:~~

6 (1) ~~Any violation of Section 11357 or a statutory predecessor~~
7 ~~thereof.~~

8 (2) ~~Unlawful possession of a device, contrivance, instrument,~~
9 ~~or paraphernalia used for unlawfully smoking marijuana, in~~
10 ~~violation of Section 11364, as it existed prior to January 1, 1976,~~
11 ~~or a statutory predecessor thereof.~~

12 (3) ~~Unlawful visitation or presence in a room or place in which~~
13 ~~marijuana is being unlawfully smoked or used, in violation of~~
14 ~~Section 11365, as it existed prior to January 1, 1976, or a statutory~~
15 ~~predecessor thereof.~~

16 (4) ~~Unlawfully using or being under the influence of marijuana,~~
17 ~~in violation of Section 11550, as it existed prior to January 1, 1976,~~
18 ~~or a statutory predecessor thereof.~~

19 ~~Any person subject to an arrest or conviction for those offenses~~
20 ~~may apply to the Department of Justice for destruction of records~~
21 ~~pertaining to the arrest or conviction if two or more years have~~
22 ~~elapsed since the date of the conviction, or since the date of the~~
23 ~~arrest if not followed by a conviction. The application shall be~~
24 ~~submitted upon a form supplied by the Department of Justice and~~
25 ~~shall be accompanied by a fee, which shall be established by the~~
26 ~~department in an amount which will defray the cost of~~
27 ~~administering this subdivision and costs incurred by the state, but~~
28 ~~which shall not exceed thirty-seven dollars and fifty cents (\$37.50).~~
29 ~~The application form may be made available at every local police~~
30 ~~or sheriff's department and from the Department of Justice and~~
31 ~~may require that information which the department determines is~~
32 ~~necessary for purposes of identification.~~

33 ~~The department may request, but not require, the applicant to~~
34 ~~include a self-administered fingerprint upon the application. If the~~
35 ~~department is unable to sufficiently identify the applicant for~~
36 ~~purposes of this subdivision without the fingerprint or without~~
37 ~~additional fingerprints, it shall so notify the applicant and shall~~
38 ~~request the applicant to submit any fingerprints which may be~~
39 ~~required to effect identification, including a complete set if~~
40 ~~necessary, or, alternatively, to abandon the application and request~~

1 a refund of all or a portion of the fee submitted with the application,
2 as provided in this section. If the applicant fails or refuses to submit
3 fingerprints in accordance with the department's request within a
4 reasonable time which shall be established by the department, or
5 if the applicant requests a refund of the fee, the department shall
6 promptly mail a refund to the applicant at the address specified in
7 the application or at any other address which may be specified by
8 the applicant. However, if the department has notified the applicant
9 that election to abandon the application will result in forfeiture of
10 a specified amount which is a portion of the fee, the department
11 may retain a portion of the fee which the department determines
12 will defray the actual costs of processing the application, provided
13 the amount of the portion retained shall not exceed ten dollars
14 (\$10).

15 Upon receipt of a sufficient application, the Department of
16 Justice shall destroy records of the department, if any, pertaining
17 to the arrest or conviction and shall notify the Federal Bureau of
18 Investigation, the law enforcement agency which arrested the
19 applicant, and, if the applicant was convicted, the probation
20 department which investigated the applicant and the Department
21 of Motor Vehicles, of the application.

22 (e) Notwithstanding subdivision (a) or (b), written transcriptions
23 of oral testimony in court proceedings and published judicial
24 appellate reports are not subject to this section. Additionally, no
25 records shall be destroyed pursuant to subdivision (a) if the
26 defendant or a codefendant has filed a civil action against the peace
27 officers or law enforcement jurisdiction which made the arrest or
28 instituted the prosecution and if the agency which is the custodian
29 of those records has received a certified copy of the complaint in
30 the civil action, until the civil action has finally been resolved.
31 Immediately following the final resolution of the civil action,
32 records subject to subdivision (a) shall be destroyed if more than
33 two years have elapsed from the date of the conviction or arrest
34 without conviction.

35 SEC. 3.

36 SEC. 2. Section 117560 of the Health and Safety Code is
37 amended to read:

38 117560. A state fish and game warden, police officer of a city,
39 sheriff, deputy of a sheriff, person described in subdivision (j) of
40 Section 830.7 of the Penal Code, and any other peace officer of

1 the State of California, within his or her respective jurisdiction,
2 shall enforce this article.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 530.5 of the Penal Code is amended to read:

5 530.5. (a) Every person who willfully obtains personal
6 identifying information, as defined in subdivision (b) of Section
7 530.55, of another person, and uses that information for any
8 unlawful purpose, including to obtain, or attempt to obtain, credit,
9 goods, services, real property, or medical information without the
10 consent of that person, is guilty of a public offense, and upon
11 conviction therefor, shall be punished by a fine, by imprisonment
12 in a county jail not to exceed one year, or by both a fine and
13 imprisonment, or by imprisonment in the state prison.

14 (b) In any case in which a person willfully obtains personal
15 identifying information of another person, uses that information
16 to commit a crime in addition to a violation of subdivision (a), and
17 is convicted of that crime, the court records shall reflect that the
18 person whose identity was falsely used to commit the crime did
19 not commit the crime.

20 (c) (1) Every person who, with the intent to defraud, acquires
21 or retains possession of the personal identifying information, as
22 defined in subdivision (b) of Section 530.55, of another person is
23 guilty of a public offense, and upon conviction therefor, shall be
24 punished by a fine, by imprisonment in a county jail not to exceed
25 one year, or by both a fine and imprisonment.

26 (2) Every person who, with the intent to defraud, acquires or
27 retains possession of the personal identifying information, as
28 defined in subdivision (b) of Section 530.55, of another person,
29 and who has previously been convicted of a violation of this
30 section, upon conviction therefor shall be punished by a fine, by
31 imprisonment in a county jail not to exceed one year, or by both
32 a fine and imprisonment, or by imprisonment in the state prison.

33 (3) Every person who, with the intent to defraud, acquires or
34 retains possession of the personal identifying information, as
35 defined in subdivision (b) of Section 530.55, of 10 or more other
36 persons is guilty of a public offense, and upon conviction therefor,
37 shall be punished by a fine, by imprisonment in a county jail not
38 to exceed one year, or by both a fine and imprisonment, or by
39 imprisonment in the state prison.

(d) (1) Every person who, with the intent to defraud, sells, transfers, or conveys the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(2) Every person who, with actual knowledge that the personal identifying information, as defined in subdivision (b) of Section 530.55, of a specific person will be used to commit a violation of subdivision (a), sells, transfers, or conveys that same personal identifying information is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in the state prison, or by both a fine and imprisonment.

(e) Every person who commits mail theft, as defined in Section 1708 of Title 18 of the United States Code, is guilty of a public offense, and upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Prosecution under this subdivision shall not limit or preclude prosecution under any other provision of law, including, but not limited to, subdivisions (a) to (c), inclusive, of this section.

(f) An interactive computer service or access software provider, as defined in subsection (f) of Section 230 of Title 47 of the United States Code, shall not be liable under this section unless the service or provider acquires, transfers, sells, conveys, or retains possession of personal information with the intent to defraud.

~~SEC. 5.~~

SEC. 4. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.

1 No agreement to engage in an act of prostitution shall constitute
2 a violation of this subdivision unless some act, in addition to the
3 agreement, is done within this state in furtherance of the
4 commission of an act of prostitution by the person agreeing to
5 engage in that act. As used in this subdivision, "prostitution"
6 includes any lewd act between persons for money or other
7 consideration.

8 (c) Who accosts other persons in any public place or in any
9 place open to the public for the purpose of begging or soliciting
10 alms.

11 (d) Who loiters in or about any toilet open to the public for the
12 purpose of engaging in or soliciting any lewd or lascivious or any
13 unlawful act.

14 (e) Who lodges in any building, structure, vehicle, or place,
15 whether public or private, without the permission of the owner or
16 person entitled to the possession or in control of it.

17 (f) Who is found in any public place under the influence of
18 intoxicating liquor, any drug, controlled substance, toluene, or any
19 combination of any intoxicating liquor, drug, controlled substance,
20 or toluene, in a condition that he or she is unable to exercise care
21 for his or her own safety or the safety of others, or by reason of
22 his or her being under the influence of intoxicating liquor, any
23 drug, controlled substance, toluene, or any combination of any
24 intoxicating liquor, drug, or toluene, interferes with or obstructs
25 or prevents the free use of any street, sidewalk, or other public
26 way.

27 (g) When a person has violated subdivision (f), a peace officer,
28 if he or she is reasonably able to do so, shall place the person, or
29 cause him or her to be placed, in civil protective custody. The
30 person shall be taken to a facility, designated pursuant to Section
31 5170 of the Welfare and Institutions Code, for the 72-hour
32 treatment and evaluation of inebriates. A peace officer may place
33 a person in civil protective custody with that kind and degree of
34 force which would be lawful were he or she effecting an arrest for
35 a misdemeanor without a warrant. No person who has been placed
36 in civil protective custody shall thereafter be subject to any criminal
37 prosecution or juvenile court proceeding based on the facts giving
38 rise to this placement. This subdivision shall not apply to the
39 following persons:

1 (1) Any person who is under the influence of any drug, or under
2 the combined influence of intoxicating liquor and any drug.

3 (2) Any person who a peace officer has probable cause to believe
4 has committed any felony, or who has committed any misdemeanor
5 in addition to subdivision (f).

6 (3) Any person who a peace officer in good faith believes will
7 attempt escape or will be unreasonably difficult for medical
8 personnel to control.

9 (h) Who loiters, prowls, or wanders upon the private property
10 of another, at any time, without visible or lawful business with the
11 owner or occupant. As used in this subdivision, “loiter” means to
12 delay or linger without a lawful purpose for being on the property
13 and for the purpose of committing a crime as opportunity may be
14 discovered.

15 (i) Who, while loitering, prowling, or wandering upon the private
16 property of another, at any time, peeks in the door or window of
17 any inhabited building or structure, without visible or lawful
18 business with the owner or occupant.

19 (j) (1) Any person who looks through a hole or opening, into,
20 or otherwise views, by means of any instrumentality, including,
21 but not limited to, a periscope, telescope, binoculars, camera,
22 motion picture camera, or camcorder, the interior of a bedroom,
23 bathroom, changing room, fitting room, dressing room, or tanning
24 booth, or the interior of any other area in which the occupant has
25 a reasonable expectation of privacy, with the intent to invade the
26 privacy of a person or persons inside. This subdivision shall not
27 apply to those areas of a private business used to count currency
28 or other negotiable instruments.

29 (2) Any person who uses a concealed camcorder, motion picture
30 camera, or photographic camera of any type, to secretly videotape,
31 film, photograph, or record by electronic means, another,
32 identifiable person under or through the clothing being worn by
33 that other person, for the purpose of viewing the body of, or the
34 undergarments worn by, that other person, without the consent or
35 knowledge of that other person, with the intent to arouse, appeal
36 to, or gratify the lust, passions, or sexual desires of that person and
37 invade the privacy of that other person, under circumstances in
38 which the other person has a reasonable expectation of privacy.

39 (3) (A) Any person who uses a concealed camcorder, motion
40 picture camera, or photographic camera of any type, to secretly

1 videotape, film, photograph, or record by electronic means, another,
2 identifiable person who may be in a state of full or partial undress,
3 for the purpose of viewing the body of, or the undergarments worn
4 by, that other person, without the consent or knowledge of that
5 other person, in the interior of a bedroom, bathroom, changing
6 room, fitting room, dressing room, or tanning booth, or the interior
7 of any other area in which that other person has a reasonable
8 expectation of privacy, with the intent to invade the privacy of that
9 other person.

10 (B) Neither of the following is a defense to the crime specified
11 in this paragraph:

12 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
13 employer, employee, or business partner or associate of the victim,
14 or an agent of any of these.

15 (ii) The victim was not in a state of full or partial undress.

16 (k) In any accusatory pleading charging a violation of
17 subdivision (b), if the defendant has been once previously convicted
18 of a violation of that subdivision, the previous conviction shall be
19 charged in the accusatory pleading. If the previous conviction is
20 found to be true by the jury, upon a jury trial, or by the court, upon
21 a court trial, or is admitted by the defendant, the defendant shall
22 be imprisoned in a county jail for a period of not less than 45 days
23 and shall not be eligible for release upon completion of sentence,
24 on probation, on parole, on work furlough or work release, or on
25 any other basis until he or she has served a period of not less than
26 45 days in a county jail. In all cases in which probation is granted,
27 the court shall require as a condition thereof that the person be
28 confined in a county jail for at least 45 days. In no event does the
29 court have the power to absolve a person who violates this
30 subdivision from the obligation of spending at least 45 days in
31 confinement in a county jail.

32 In any accusatory pleading charging a violation of subdivision
33 (b), if the defendant has been previously convicted two or more
34 times of a violation of that subdivision, each of these previous
35 convictions shall be charged in the accusatory pleading. If two or
36 more of these previous convictions are found to be true by the jury,
37 upon a jury trial, or by the court, upon a court trial, or are admitted
38 by the defendant, the defendant shall be imprisoned in a county
39 jail for a period of not less than 90 days and shall not be eligible
40 for release upon completion of sentence, on probation, on parole,

1 on work furlough or work release, or on any other basis until he
2 or she has served a period of not less than 90 days in a county jail.
3 In all cases in which probation is granted, the court shall require
4 as a condition thereof that the person be confined in a county jail
5 for at least 90 days. In no event does the court have the power to
6 absolve a person who violates this subdivision from the obligation
7 of spending at least 90 days in confinement in a county jail.

8 In addition to any punishment prescribed by this section, a court
9 may suspend, for not more than 30 days, the privilege of the person
10 to operate a motor vehicle pursuant to Section 13201.5 of the
11 Vehicle Code for any violation of subdivision (b) that was
12 committed within 1,000 feet of a private residence and with the
13 use of a vehicle. In lieu of the suspension, the court may order a
14 person's privilege to operate a motor vehicle restricted, for not
15 more than six months, to necessary travel to and from the person's
16 place of employment or education. If driving a motor vehicle is
17 necessary to perform the duties of the person's employment, the
18 court may also allow the person to drive in that person's scope of
19 employment.

20 ~~SEC. 6:~~

21 *SEC. 5.* Section 977 of the Penal Code is amended to read:

22 977. (a) (1) In all cases in which the accused is charged with
23 a misdemeanor only, he or she may appear by counsel only, except
24 as provided in paragraphs (2) and (3). If the accused agrees, the
25 initial court appearance, arraignment, and plea may be by video,
26 as provided by subdivision (c).

27 (2) If the accused is charged with a misdemeanor offense
28 involving domestic violence, as defined in Section 6211 of the
29 Family Code, or a misdemeanor violation of Section 273.6, the
30 accused shall be present for arraignment and sentencing, and at
31 any time during the proceedings when ordered by the court for the
32 purpose of being informed of the conditions of a protective order
33 issued pursuant to Section 136.2.

34 (3) If the accused is charged with a misdemeanor offense
35 involving driving under the influence, in an appropriate case, the
36 court may order a defendant to be present for arraignment, at the
37 time of plea, or at sentencing. For purposes of this paragraph, a
38 misdemeanor offense involving driving under the influence shall
39 include a misdemeanor violation of any of the following:

40 (A) Subdivision (b) of Section 191.5.

1 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
2 Code.

3 (C) Section 23152 of the Vehicle Code.

4 (D) Section 23153 of the Vehicle Code.

5 (b) (1) In all cases in which a felony is charged, the accused
6 shall be present at the arraignment, at the time of plea, during the
7 preliminary hearing, during those portions of the trial when
8 evidence is taken before the trier of fact, and at the time of the
9 imposition of sentence. The accused shall be personally present
10 at all other proceedings unless he or she shall, with leave of court,
11 execute in open court, a written waiver of his or her right to be
12 personally present, as provided by paragraph (2). If the accused
13 agrees, the initial court appearance, arraignment, and plea may be
14 by video, as provided by subdivision (c).

15 (2) The accused may execute a written waiver of his or her right
16 to be personally present, approved by his or her counsel, and the
17 waiver shall be filed with the court. However, the court may
18 specifically direct the defendant to be personally present at any
19 particular proceeding or portion thereof. The waiver shall be
20 substantially in the following form:

21
22 “Waiver of ~~Defendant’s~~ *Defendant’s* Personal Presence”
23

24 “The undersigned defendant, having been advised of his or her
25 right to be present at all stages of the proceedings, including, but
26 not limited to, presentation of and arguments on questions of fact
27 and law, and to be confronted by and cross-examine all witnesses,
28 hereby waives the right to be present at the hearing of any motion
29 or other proceeding in this cause. The undersigned defendant
30 hereby requests the court to proceed during every absence of the
31 defendant that the court may permit pursuant to this waiver, and
32 hereby agrees that his or her interest is represented at all times by
33 the presence of his or her attorney the same as if the defendant
34 were personally present in court, and further agrees that notice to
35 his or her attorney that his or her presence in court on a particular
36 day at a particular time is required is notice to the defendant of the
37 requirement of his or her appearance at that time and place.”

38 (c) The court may permit the initial court appearance and
39 arraignment in superior court of defendants held in any state,
40 county, or local facility within the county on felony or

1 misdemeanor charges, except for those defendants who were
2 indicted by a grand jury, to be conducted by two-way electronic
3 audiovideo communication between the defendant and the
4 courtroom in lieu of the physical presence of the defendant in the
5 courtroom. If the defendant is represented by counsel, the attorney
6 shall be present with the defendant at the initial court appearance
7 and arraignment, and may enter a plea during the arraignment.
8 However, if the defendant is represented by counsel at an initial
9 hearing in superior court in a felony case, and if the defendant does
10 not plead guilty or nolo contendere to any charge, the attorney
11 shall be present with the defendant or if the attorney is not present
12 with the defendant, the attorney shall be present in court during
13 the hearing. The defendant shall have the right to make his or her
14 plea while physically present in the courtroom if he or she so
15 requests. If the defendant decides not to exercise the right to be
16 physically present in the courtroom, he or she shall execute a
17 written waiver of that right. A judge may order a defendant's
18 personal appearance in court for the initial court appearance and
19 arraignment. In a misdemeanor case, a judge may, pursuant to this
20 subdivision, accept a plea of guilty or no contest from a defendant
21 who is not physically in the courtroom. In a felony case, a judge
22 may, pursuant to this subdivision, accept a plea of guilty or no
23 contest from a defendant who is not physically in the courtroom
24 if the parties stipulate thereto.

25 (d) Notwithstanding subdivision (c), if the defendant is
26 represented by counsel, the attorney shall be present with the
27 defendant in any county exceeding 4,000,000 persons in
28 population.

29 SEC. 7. Section 1054.5 of the Penal Code is amended to read:

30 ~~1054.5. (a) No order requiring discovery shall be made in~~
31 ~~criminal cases except as provided in this chapter. This chapter~~
32 ~~shall be the only means by which the defendant may compel the~~
33 ~~disclosure or production of information from prosecuting attorneys,~~
34 ~~law enforcement agencies which investigated or prepared the case~~
35 ~~against the defendant, or any other persons or agencies which the~~
36 ~~prosecuting attorney or investigating agency may have employed~~
37 ~~to assist them in performing their duties.~~

38 ~~(b) Before a party may seek court enforcement of any of the~~
39 ~~disclosures required by this chapter, the party shall make an~~
40 ~~informal request of opposing counsel for the desired materials and~~

1 information. If within 15 days the opposing counsel fails to disclose
2 the materials and information requested, the party may seek a court
3 order. Upon a showing that a party has not complied with Section
4 1054.1 or 1054.3 and upon a showing that the moving party
5 complied with the informal discovery procedure provided in this
6 subdivision, a court may make any order necessary to enforce the
7 provisions of this chapter, including, but not limited to, immediate
8 disclosure, contempt proceedings, delaying or prohibiting the
9 testimony of a witness or the presentation of real evidence,
10 continuance of the matter, or any other lawful order. Further, the
11 court may advise the jury of any failure or refusal to disclose and
12 of any untimely disclosure.

13 (e) ~~The court may prohibit the testimony of a witness pursuant~~
14 ~~to subdivision (b) only if all other sanctions have been exhausted.~~
15 ~~The court shall not dismiss a charge pursuant to subdivision (b)~~
16 ~~unless required to do so by the Constitution of the United States.~~

17 ~~SEC. 8.~~

18 *SEC. 6.* Section 1170.11 of the Penal Code is amended to read:

19 1170.11. As used in Section 1170.1, the term “specific
20 enhancement” means an enhancement that relates to the
21 circumstances of the crime. It includes, but is not limited to, the
22 enhancements provided in Sections 186.10, 186.11, 186.22, 186.26,
23 186.33, 273.4, 289.5, 290.4, 290.45, 290.46, 347, and 368,
24 subdivisions (a) and (b) of Section 422.75, paragraphs (2), (3), (4),
25 and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3),
26 and (4) of subdivision (a) of Section 452.1, subdivision (g) of
27 Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10,
28 667.15, 667.16, 667.17, 674, 675, 12021.5, 12022, 12022.2,
29 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7,
30 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and
31 12280 of this code, and in Sections 1522.01 and 11353.1,
32 subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5,
33 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.7, 25189.5,
34 and 25189.7 of the Health and Safety Code, and in Sections 20001
35 and 23558 of the Vehicle Code, and in Sections 10980 and 14107
36 of the Welfare and Institutions Code.

37 ~~SEC. 9.~~

38 *SEC. 7.* Section 1538.5 of the Penal Code is amended to read:

39 1538.5. (a) (1) A defendant may move for the return of
40 property or to suppress as evidence any tangible or intangible thing

1 obtained as a result of a search or seizure on either of the following
2 grounds:

3 (A) The search or seizure without a warrant was unreasonable.

4 (B) The search or seizure with a warrant was unreasonable
5 because any of the following apply:

6 (i) The warrant is insufficient on its face.

7 (ii) The property or evidence obtained is not that described in
8 the warrant.

9 (iii) There was not probable cause for the issuance of the
10 warrant.

11 (iv) The method of execution of the warrant violated federal or
12 state constitutional standards.

13 (v) There was any other violation of federal or state
14 constitutional standards.

15 (2) A motion pursuant to paragraph (1) shall be made in writing
16 and accompanied by a memorandum of points and authorities and
17 proof of service. The memorandum shall list the specific items of
18 property or evidence sought to be returned or suppressed and shall
19 set forth the factual basis and the legal authorities that demonstrate
20 why the motion should be granted.

21 (b) When consistent with the procedures set forth in this section
22 and subject to the provisions of Sections 170 to 170.6, inclusive,
23 of the Code of Civil Procedure, the motion should first be heard
24 by the magistrate who issued the search warrant if there is a
25 warrant.

26 (c) (1) Whenever a search or seizure motion is made in the
27 superior court as provided in this section, the judge or magistrate
28 shall receive evidence on any issue of fact necessary to determine
29 the motion.

30 (2) While a witness is under examination during a hearing
31 pursuant to a search or seizure motion, the judge or magistrate
32 shall, upon motion of either party, do any of the following:

33 (A) Exclude all potential and actual witnesses who have not
34 been examined.

35 (B) Order the witnesses not to converse with each other until
36 they are all examined.

37 (C) Order, where feasible, that the witnesses be kept separated
38 from each other until they are all examined.

1 (D) Hold a hearing, on the record, to determine if the person
2 sought to be excluded is, in fact, a person excludable under this
3 section.

4 (3) Either party may challenge the exclusion of any person under
5 paragraph (2).

6 (4) Paragraph (2) does not apply to the investigating officer or
7 the investigator for the defendant, nor does it apply to officers
8 having custody of persons brought before the court.

9 (d) If a search or seizure motion is granted pursuant to the
10 proceedings authorized by this section, the property or evidence
11 shall not be admissible against the movant at any trial or other
12 hearing unless further proceedings authorized by this section,
13 Section 871.5, 1238, or 1466 are utilized by the people.

14 (e) If a search or seizure motion is granted at a trial, the property
15 shall be returned upon order of the court unless it is otherwise
16 subject to lawful detention. If the motion is granted at a special
17 hearing, the property shall be returned upon order of the court only
18 if, after the conclusion of any further proceedings authorized by
19 this section, Section 1238 or 1466, the property is not subject to
20 lawful detention or if the time for initiating the proceedings has
21 expired, whichever occurs last. If the motion is granted at a
22 preliminary hearing, the property shall be returned upon order of
23 the court after 10 days unless the property is otherwise subject to
24 lawful detention or unless, within that time, further proceedings
25 authorized by this section, Section 871.5 or 1238 are utilized; if
26 they are utilized, the property shall be returned only if, after the
27 conclusion of the proceedings, the property is no longer subject
28 to lawful detention.

29 (f) (1) If the property or evidence relates to a felony offense
30 initiated by a complaint, the motion shall be made only upon filing
31 of an information, except that the defendant may make the motion
32 at the preliminary hearing, but the motion shall be restricted to
33 evidence sought to be introduced by the people at the preliminary
34 hearing.

35 (2) The motion may be made at the preliminary examination
36 only if, at least five court days before the date set for the
37 preliminary examination, the defendant has filed and personally
38 served on the people a written motion accompanied by a
39 memorandum of points and authorities as required by paragraph
40 (2) of subdivision (a). At the preliminary examination, the

1 magistrate may grant the defendant a continuance for the purpose
2 of filing the motion and serving the motion upon the people, at
3 least five court days before resumption of the examination, upon
4 a showing that the defendant or his or her attorney of record was
5 not aware of the evidence or was not aware of the grounds for
6 suppression before the preliminary examination.

7 (3) Any written response by the people to the motion described
8 in paragraph (2) shall be filed with the court and personally served
9 on the defendant or his or her attorney of record at least two court
10 days prior to the hearing at which the motion is to be made.

11 (g) If the property or evidence relates to a misdemeanor
12 complaint, the motion shall be made before trial and heard prior
13 to trial at a special hearing relating to the validity of the search or
14 seizure. If the property or evidence relates to a misdemeanor filed
15 together with a felony, the procedure provided for a felony in this
16 section and Sections 1238 and 1539 shall be applicable.

17 (h) If, prior to the trial of a felony or misdemeanor, opportunity
18 for this motion did not exist or the defendant was not aware of the
19 grounds for the motion, the defendant shall have the right to make
20 this motion during the course of trial.

21 (i) If the property or evidence obtained relates to a felony offense
22 initiated by complaint and the defendant was held to answer at the
23 preliminary hearing, or if the property or evidence relates to a
24 felony offense initiated by indictment, the defendant shall have
25 the right to renew or make the motion at a special hearing relating
26 to the validity of the search or seizure which shall be heard prior
27 to trial and at least 10 court days after notice to the people, unless
28 the people are willing to waive a portion of this time. Any written
29 response by the people to the motion shall be filed with the court
30 and personally served on the defendant or his or her attorney of
31 record at least two court days prior to the hearing, unless the
32 defendant is willing to waive a portion of this time. If the offense
33 was initiated by indictment or if the offense was initiated by
34 complaint and no motion was made at the preliminary hearing, the
35 defendant shall have the right to fully litigate the validity of a
36 search or seizure on the basis of the evidence presented at a special
37 hearing. If the motion was made at the preliminary hearing, unless
38 otherwise agreed to by all parties, evidence presented at the special
39 hearing shall be limited to the transcript of the preliminary hearing
40 and to evidence that could not reasonably have been presented at

1 the preliminary hearing, except that the people may recall witnesses
2 who testified at the preliminary hearing. If the people object to the
3 presentation of evidence at the special hearing on the grounds that
4 the evidence could reasonably have been presented at the
5 preliminary hearing, the defendant shall be entitled to an in camera
6 hearing to determine that issue. The court shall base its ruling on
7 all evidence presented at the special hearing and on the transcript
8 of the preliminary hearing, and the findings of the magistrate shall
9 be binding on the court as to evidence or property not affected by
10 evidence presented at the special hearing. After the special hearing
11 is held, any review thereafter desired by the defendant prior to trial
12 shall be by means of an extraordinary writ of mandate or
13 prohibition filed within 30 days after the denial of his or her motion
14 at the special hearing.

15 (j) If the property or evidence relates to a felony offense initiated
16 by complaint and the defendant's motion for the return of the
17 property or suppression of the evidence at the preliminary hearing
18 is granted, and if the defendant is not held to answer at the
19 preliminary hearing, the people may file a new complaint or seek
20 an indictment after the preliminary hearing, and the ruling at the
21 prior hearing shall not be binding in any subsequent proceeding,
22 except as limited by subdivision (p). In the alternative, the people
23 may move to reinstate the complaint, or those parts of the complaint
24 for which the defendant was not held to answer, pursuant to Section
25 871.5. If the property or evidence relates to a felony offense
26 initiated by complaint and the defendant's motion for the return
27 or suppression of the property or evidence at the preliminary
28 hearing is granted, and if the defendant is held to answer at the
29 preliminary hearing, the ruling at the preliminary hearing shall be
30 binding upon the people unless, upon notice to the defendant and
31 the court in which the preliminary hearing was held and upon the
32 filing of an information, the people, within 15 days after the
33 preliminary hearing, request a special hearing, in which case the
34 validity of the search or seizure shall be relitigated de novo on the
35 basis of the evidence presented at the special hearing, and the
36 defendant shall be entitled, as a matter of right, to a continuance
37 of the special hearing for a period of time up to 30 days. The people
38 may not request relitigation of the motion at a special hearing if
39 the defendant's motion has been granted twice. If the defendant's
40 motion is granted at a special hearing, the people, if they have

1 additional evidence relating to the motion and not presented at the
2 special hearing, shall have the right to show good cause at the trial
3 why the evidence was not presented at the special hearing and why
4 the prior ruling at the special hearing should not be binding, or the
5 people may seek appellate review as provided in subdivision (o),
6 unless the court, prior to the time the review is sought, has
7 dismissed the case pursuant to Section 1385. If the case has been
8 dismissed pursuant to Section 1385, either on the court's own
9 motion or the motion of the people after the special hearing, the
10 people may file a new complaint or seek an indictment after the
11 special hearing, and the ruling at the special hearing shall not be
12 binding in any subsequent proceeding, except as limited by
13 subdivision (p). If the property or evidence seized relates solely
14 to a misdemeanor complaint, and the defendant made a motion for
15 the return of property or the suppression of evidence in the superior
16 court prior to trial, both the people and defendant shall have the
17 right to appeal any decision of that court relating to that motion to
18 the appellate division, in accordance with the California Rules of
19 Court provisions governing appeals to the appellate division in
20 criminal cases. If the people prosecute review by appeal or writ to
21 decision, or any review thereof, in a felony or misdemeanor case,
22 it shall be binding upon them.

23 (k) If the defendant's motion to return property or suppress
24 evidence is granted and the case is dismissed pursuant to Section
25 1385, or the people appeal in a misdemeanor case pursuant to
26 subdivision (j), the defendant shall be released pursuant to Section
27 1318 if he or she is in custody and not returned to custody unless
28 the proceedings are resumed in the trial court and he or she is
29 lawfully ordered by the court to be returned to custody.

30 If the defendant's motion to return property or suppress evidence
31 is granted and the people file a petition for writ of mandate or
32 prohibition pursuant to subdivision (o) or a notice of intention to
33 file a petition, the defendant shall be released pursuant to Section
34 1318, unless (1) he or she is charged with a capital offense in a
35 case where the proof is evident and the presumption great, or (2)
36 he or she is charged with a noncapital offense defined in Chapter
37 1 (commencing with Section 187) of Title 8 of Part 1, and the court
38 orders that the defendant be discharged from actual custody upon
39 bail.

1 (l) If the defendant's motion to return property or suppress
2 evidence is granted, the trial of a criminal case shall be stayed to
3 a specified date pending the termination in the appellate courts of
4 this state of the proceedings provided for in this section, Section
5 871.5, 1238, or 1466 and, except upon stipulation of the parties,
6 pending the time for the initiation of these proceedings. Upon the
7 termination of these proceedings, the defendant shall be brought
8 to trial as provided by Section 1382, and, subject to the provisions
9 of Section 1382, whenever the people have sought and been denied
10 appellate review pursuant to subdivision (o), the defendant shall
11 be entitled to have the action dismissed if he or she is not brought
12 to trial within 30 days of the date of the order that is the last denial
13 of the petition. Nothing contained in this subdivision shall prohibit
14 a court, at the same time as it rules upon the search and seizure
15 motion, from dismissing a case pursuant to Section 1385 when the
16 dismissal is upon the court's own motion and is based upon an
17 order at the special hearing granting the defendant's motion to
18 return property or suppress evidence. In a misdemeanor case, the
19 defendant shall be entitled to a continuance of up to 30 days if he
20 or she intends to file a motion to return property or suppress
21 evidence and needs this time to prepare for the special hearing on
22 the motion. In case of an appeal by the defendant in a misdemeanor
23 case from the denial of the motion, he or she shall be entitled to
24 bail as a matter of right, and, in the discretion of the trial or
25 appellate court, may be released on his or her own recognizance
26 pursuant to Section 1318. In the case of an appeal by the defendant
27 in a misdemeanor case from the denial of the motion, the trial court
28 may, in its discretion, order or deny a stay of further proceedings
29 pending disposition of the appeal.

30 (m) The proceedings provided for in this section, and Sections
31 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive
32 remedies prior to conviction to test the unreasonableness of a search
33 or seizure where the person making the motion for the return of
34 property or the suppression of evidence is a defendant in a criminal
35 case and the property or thing has been offered or will be offered
36 as evidence against him or her. A defendant may seek further
37 review of the validity of a search or seizure on appeal from a
38 conviction in a criminal case notwithstanding the fact that the
39 judgment of conviction is predicated upon a plea of guilty. Review
40 on appeal may be obtained by the defendant provided that at some

1 stage of the proceedings prior to conviction he or she has moved
2 for the return of property or the suppression of the evidence.

3 (n) This section establishes only the procedure for suppression
4 of evidence and return of property, and does not establish or alter
5 any substantive ground for suppression of evidence or return of
6 property. Nothing contained in this section shall prohibit a person
7 from making a motion, otherwise permitted by law, to return
8 property, brought on the ground that the property obtained is
9 protected by the free speech and press provisions of the United
10 States and California Constitutions. Nothing in this section shall
11 be construed as altering (1) the law of standing to raise the issue
12 of an unreasonable search or seizure; (2) the law relating to the
13 status of the person conducting the search or seizure; (3) the law
14 relating to the burden of proof regarding the search or seizure; (4)
15 the law relating to the reasonableness of a search or seizure
16 regardless of any warrant that may have been utilized; or (5) the
17 procedure and law relating to a motion made pursuant to Section
18 871.5 or 995, or the procedures that may be initiated after the
19 granting or denial of a motion.

20 (o) Within 30 days after a defendant's motion is granted at a
21 special hearing in a felony case, the people may file a petition for
22 writ of mandate or prohibition in the court of appeal, seeking
23 appellate review of the ruling regarding the search or seizure
24 motion. If the trial of a criminal case is set for a date that is less
25 than 30 days from the granting of a defendant's motion at a special
26 hearing in a felony case, the people, if they have not filed a petition
27 and wish to preserve their right to file a petition, shall file in the
28 superior court on or before the trial date or within 10 days after
29 the special hearing, whichever occurs last, a notice of intention to
30 file a petition and shall serve a copy of the notice upon the
31 defendant.

32 (p) If a defendant's motion to return property or suppress
33 evidence in a felony matter has been granted twice, the people
34 may not file a new complaint or seek an indictment in order to
35 relitigate the motion or relitigate the matter de novo at a special
36 hearing as otherwise provided by subdivision (j), unless the people
37 discover additional evidence relating to the motion that was not
38 reasonably discoverable at the time of the second suppression
39 hearing. Relitigation of the motion shall be heard by the same

1 judge who granted the motion at the first hearing if the judge is
2 available.

3 (q) The amendments to this section enacted in the 1997 portion
4 of the 1997–98 Regular Session of the Legislature shall apply to
5 all criminal proceedings conducted on or after January 1, 1998.

6 ~~SEC. 10. Section 827 of the Welfare and Institutions Code is~~
7 ~~amended to read:~~

8 ~~827. (a) (1) Except as provided in Section 828, a case file~~
9 ~~may be inspected only by the following:~~

10 ~~(A) Court personnel.~~

11 ~~(B) The Attorney General, the district attorney, a city attorney,~~
12 ~~or city prosecutor authorized to prosecute criminal or juvenile~~
13 ~~cases under state law.~~

14 ~~(C) The minor who is the subject of the proceeding.~~

15 ~~(D) His or her parents or guardian.~~

16 ~~(E) The attorneys for the parties, judges, referees, other hearing~~
17 ~~officers, probation officers, and law enforcement officers who are~~
18 ~~actively participating in criminal or juvenile proceedings involving~~
19 ~~the minor.~~

20 ~~(F) The superintendent or designee of the school district where~~
21 ~~the minor is enrolled or attending school.~~

22 ~~(G) Members of the child protective agencies as defined in~~
23 ~~Section 11165.9 of the Penal Code.~~

24 ~~(H) The State Department of Social Services to carry out its~~
25 ~~duties pursuant to Division 9 (commencing with Section 10000),~~
26 ~~and Part 5 (commencing with Section 7900) of Division 12, of the~~
27 ~~Family Code to oversee and monitor county child welfare agencies;~~
28 ~~children in foster care or receiving foster care assistance, and~~
29 ~~out-of-state placements.~~

30 ~~(I) Authorized legal staff or special investigators who are peace~~
31 ~~officers who are employed by, or who are authorized~~
32 ~~representatives of, the State Department of Social Services, as~~
33 ~~necessary to the performance of their duties to inspect, license,~~
34 ~~and investigate community care facilities, and to ensure that the~~
35 ~~standards of care and services provided in those facilities are~~
36 ~~adequate and appropriate and to ascertain compliance with the~~
37 ~~rules and regulations to which the facilities are subject. The~~
38 ~~confidential information shall remain confidential except for~~
39 ~~purposes of inspection, licensing, or investigation pursuant to~~
40 ~~Chapter 3 (commencing with Section 1500) and Chapter 3.4~~

~~(commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.~~

~~(J) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.~~

~~(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.~~

~~(L) A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.~~

1 ~~(M) A local child support agency for the purpose of establishing~~
2 ~~paternity and establishing and enforcing child support orders.~~

3 ~~(N) Juvenile justice commissions as established under Section~~
4 ~~225. The confidentiality provisions of Section 10850 shall apply~~
5 ~~to a juvenile justice commission and its members.~~

6 ~~(O) Any other person who may be designated by court order of~~
7 ~~the judge of the juvenile court upon filing a petition.~~

8 ~~(2) Notwithstanding any other law and subject to subparagraph~~
9 ~~(A) of paragraph (3), juvenile case files, except those relating to~~
10 ~~matters within the jurisdiction of the court pursuant to Section 601~~
11 ~~or 602, that pertain to a deceased child who was within the~~
12 ~~jurisdiction of the juvenile court pursuant to Section 300, shall be~~
13 ~~released to the public pursuant to an order by the juvenile court~~
14 ~~after a petition has been filed and interested parties have been~~
15 ~~afforded an opportunity to file an objection. Any information~~
16 ~~relating to another child or which could identify another child,~~
17 ~~except for information about the deceased, shall be redacted from~~
18 ~~the juvenile case file prior to release, unless a specific order is~~
19 ~~made by the juvenile court to the contrary. Except as provided in~~
20 ~~this paragraph, the presiding judge of the juvenile court may issue~~
21 ~~an order prohibiting or limiting access to the juvenile case file, or~~
22 ~~any portion thereof, of a deceased child only upon a showing that~~
23 ~~release of the juvenile case file or any portion thereof is detrimental~~
24 ~~to the safety, protection, or physical or emotional well-being of~~
25 ~~another child who is directly or indirectly connected to the juvenile~~
26 ~~case that is the subject of the petition.~~

27 ~~(3) Access to juvenile case files pertaining to matters within the~~
28 ~~jurisdiction of the juvenile court pursuant to Section 300 shall be~~
29 ~~limited as follows:~~

30 ~~(A) If a juvenile case file, or any portion thereof, is privileged~~
31 ~~or confidential pursuant to any other state law or federal law or~~
32 ~~regulation, the requirements of that state law or federal law or~~
33 ~~regulation prohibiting or limiting release of the juvenile case file~~
34 ~~or any portions thereof shall prevail. Unless a person is listed in~~
35 ~~subparagraphs (A) to (N), inclusive, of paragraph (1) and is entitled~~
36 ~~to access under the other state law or federal law or regulation~~
37 ~~without a court order, all those seeking access, pursuant to other~~
38 ~~authorization, to portions of, or information relating to the contents~~
39 ~~of, juvenile case files protected under another state law or federal~~
40 ~~law or regulation, shall petition the juvenile court. The juvenile~~

1 court may only release the portion of, or information relating to
2 the contents of, juvenile case files protected by another state law
3 or federal law or regulation if disclosure is not detrimental to the
4 safety, protection, or physical or emotional well-being of a child
5 who is directly or indirectly connected to the juvenile case that is
6 the subject of the petition. This paragraph shall not be construed
7 to limit the ability of the juvenile court to carry out its duties in
8 conducting juvenile court proceedings.

9 (B) Prior to the release of the juvenile case file or any portion
10 thereof, the court shall afford due process, including a notice of
11 and an opportunity to file an objection to the release of the record
12 or report to all interested parties.

13 (4) A juvenile case file, any portion thereof, and information
14 relating to the content of the juvenile case file, may not be
15 disseminated by the receiving agencies to any persons or agencies,
16 other than those persons or agencies authorized to receive
17 documents pursuant to this section. Further, a juvenile case file,
18 any portion thereof, and information relating to the content of the
19 juvenile case file, may not be made as an attachment to any other
20 documents without the prior approval of the presiding judge of the
21 juvenile court, unless it is used in connection with and in the course
22 of a criminal investigation or a proceeding brought to declare a
23 person a dependent child or ward of the juvenile court.

24 (b) (1) While the Legislature reaffirms its belief that juvenile
25 court records, in general, should be confidential, it is the intent of
26 the Legislature in enacting this subdivision to provide for a limited
27 exception to juvenile court record confidentiality to promote more
28 effective communication among juvenile courts, family courts,
29 law enforcement agencies, and schools to ensure the rehabilitation
30 of juvenile criminal offenders as well as to lessen the potential for
31 drug use, violence, other forms of delinquency, and child abuse.

32 (2) Notwithstanding subdivision (a), written notice that a minor
33 enrolled in a public school, kindergarten to grade 12, inclusive,
34 has been found by a court of competent jurisdiction to have
35 committed any felony or any misdemeanor involving curfew,
36 gambling, alcohol, drugs, tobacco products, carrying of weapons,
37 a sex offense listed in Section 290 of the Penal Code, assault or
38 battery, larceny, vandalism, or graffiti shall be provided by the
39 court, within seven days, to the superintendent of the school district
40 of attendance. Written notice shall include only the offense found

1 to have been committed by the minor and the disposition of the
2 minor's case. This notice shall be expeditiously transmitted by the
3 district superintendent to the principal at the school of attendance.
4 The principal shall expeditiously disseminate the information to
5 those counselors directly supervising or reporting on the behavior
6 or progress of the minor. In addition, the principal shall disseminate
7 the information to any teacher or administrator directly supervising
8 or reporting on the behavior or progress of the minor whom the
9 principal believes needs the information to work with the pupil in
10 an appropriate fashion, to avoid being needlessly vulnerable or to
11 protect other persons from needless vulnerability.

12 Any information received by a teacher, counselor, or
13 administrator under this subdivision shall be received in confidence
14 for the limited purpose of rehabilitating the minor and protecting
15 students and staff, and shall not be further disseminated by the
16 teacher, counselor, or administrator, except insofar as
17 communication with the juvenile, his or her parents or guardians,
18 law enforcement personnel, and the juvenile's probation officer
19 is necessary to effectuate the juvenile's rehabilitation or to protect
20 students and staff.

21 An intentional violation of the confidentiality provisions of this
22 paragraph is a misdemeanor punishable by a fine not to exceed
23 five hundred dollars (\$500).

24 (3) If a minor is removed from public school as a result of the
25 court's finding described in subdivision (b), the superintendent
26 shall maintain the information in a confidential file and shall defer
27 transmittal of the information received from the court until the
28 minor is returned to public school. If the minor is returned to a
29 school district other than the one from which the minor came, the
30 parole or probation officer having jurisdiction over the minor shall
31 so notify the superintendent of the last district of attendance, who
32 shall transmit the notice received from the court to the
33 superintendent of the new district of attendance.

34 (e) Each probation report filed with the court concerning a minor
35 whose record is subject to dissemination pursuant to subdivision
36 (b) shall include on the face sheet the school at which the minor
37 is currently enrolled. The county superintendent shall provide the
38 court with a listing of all of the schools within each school district,
39 within the county, along with the name and mailing address of
40 each district superintendent.

~~(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: “Unlawful Dissemination Of This Information Is A Misdemeanor.” Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor’s subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor’s school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.~~

~~Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).~~

~~(e) For purposes of this section, a “juvenile case file” means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.~~

~~SEC. 11.~~

SEC. 8. Section 6608.8 of the Welfare and Institutions Code is amended to read:

6608.8. (a) For any person who is proposed for community outpatient treatment under the forensic conditional release program, the department shall provide to the court a copy of the written contract entered into with any public or private person or entity responsible for monitoring and supervising the patient’s outpatient placement and treatment program. This subdivision does not apply

1 to subcontracts between the contractor and clinicians providing
2 treatment and related services to the person.

3 (b) The terms and conditions of conditional release shall be
4 drafted to include reasonable flexibility to achieve the aims of
5 conditional release, and to protect the public and the conditionally
6 released person.

7 (c) The court in its discretion may order the department to,
8 notwithstanding Section 4514 or 5328, provide a copy of the
9 written terms and conditions of conditional release to the sheriff
10 or chief of police, or both, that have jurisdiction over the proposed
11 or actual placement community.

12 (d) (1) Except in an emergency, the department or its designee
13 shall not alter the terms and conditions of conditional release
14 without the prior approval of the court.

15 (2) The department shall provide notice to the person committed
16 under this article and the district attorney or designated county
17 counsel of any proposed change in the terms and conditions of
18 conditional release.

19 (3) The court on its own motion, or upon the motion of either
20 party to the action, may set a hearing on the proposed change. The
21 hearing shall be held as soon as is practicable.

22 (4) If a hearing on the proposed change is held, the court shall
23 state its findings on the record. If the court approves a change in
24 the terms and conditions of conditional release without a hearing,
25 the court shall issue a written order.

26 (5) In the case of an emergency, the department or its designee
27 may deviate from the terms and conditions of the conditional
28 release if necessary to protect public safety or the safety of the
29 person. If a hearing on the emergency is set by the court or
30 requested by either party, the hearing shall be held as soon as
31 practicable. The department, its designee, and the parties shall
32 endeavor to resolve routine matters in a cooperative fashion without
33 the need for a formal hearing.

34 (e) Notwithstanding any provision of this section, including,
35 but not limited to, subdivision (d), matters concerning the
36 residential placement, including any changes or proposed changes
37 in the residence of the person, shall be considered and determined
38 pursuant to Section 6609.1.

39 ~~SEC. 12. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 ~~SEC. 13.~~

9 *SEC. 9.* The changes to Section 1538.5 of the Penal Code by
10 Section 9 of this act are technical amendments that are not intended
11 to conflict with subdivision (d) of Section 28 of Article 1 of the
12 California Constitution.

13 ~~SEC. 14.~~

14 *SEC. 10.* Any section of any act other than Assembly Bill 299,
15 which is enacted by the Legislature during the 2007 calendar year
16 that takes effect on or before January 1, 2008, and that amends,
17 amends and renumbers, adds, repeals and adds, or repeals any one
18 or more of the sections affected by this act, shall prevail over this
19 act, whether this act is enacted prior to, or subsequent to, the
20 enactment of that act. The repeal, or repeal and addition, of any
21 article, chapter, part, title, or division of any code by this act shall
22 not become operative if any section of any other act other than
23 Assembly Bill 299 that is enacted by the Legislature during the
24 2007 calendar year and takes effect on or before January 1, 2008,
25 amends, amends and renumbers, adds, repeals and adds, or repeals,
26 or repeals any section contained in that article, chapter, part, title,
27 or division.